

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  DAKOTA ACCESS, LLC	DOCKET NO. HLP-2014-0001
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**ORDER REGARDING WINTER SUSPENSION**

(Issued December 21, 2016)

On December 19, 2016, Dakota Access, LLC (Dakota Access), filed with the Utilities Board (Board) a letter informing the Board of the company's intention to defer certain land restoration activities on certain parcels in Iowa until the spring of 2017. Dakota Access said its contractors will wrap up restoration activities for the season no later than December 24, 2016, anticipating it will resume those activities on or about March 1, 2017. Dakota Access says that it will "release all county inspectors for the winter months" on December 23, 2016, and it will provide 14 days' notice to the Board, the County Board of Supervisors for each affected county, and the affected county inspectors prior to restarting restoration activities under the Agricultural Impact Mitigation Plan (AIMP). Dakota Access says it will also provide a 14-day notice and a 48-hour notice to each affected landowner prior to restarting.

The Board understands it is not unusual for pipeline companies to suspend outdoor construction activities in the winter months; normally, the county inspectors are able to turn to other work and then return to inspecting when pipeline-related activities resume. However, the size of this particular project presents some possible concerns; it is not clear what effect this suspension may have on the ability of the

supervisors and inspectors to fulfill their statutory obligations regarding inspection of the land-restoration activities associated with this project.

Iowa Code § 479B.20 applies to this situation. Paragraph (2) of the statute provides that "[t]he county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county." The supervisors may employ a licensed professional engineer for that purpose and "the reasonable costs of the inspection shall be paid by the pipeline company."

Paragraph (4) of the statute requires that a county inspector "shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling." The pipeline company must notify the inspector of the work schedule and any schedule changes; however, "if proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site."

Paragraph (7) provides that "An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan [here, the AIMP], or the terms of an independent agreement" between the pipeline company and the landowner.

Finally, Paragraph (8) of the statute provides that the Board is responsible for instructing the inspectors "regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter."

Taking these various provisions together, it is evident that § 479B.20 contemplates that an inspector, hired by and responsible to the board of supervisors, will be present on site, or at a minimum will be available to be on site, when the pipeline company is engaged in activities pursuant to the statute, rules, or AIMP, at the expense of the pipeline company. That obligation is not absolute, however; if "proper notice" is given to the inspector, pipeline activities "shall not be delayed due to an inspector's failure to be present on the site." This presents the questions of what "proper notice" may be in these particular circumstances and what "the reasonable costs of inspection" might include.

The Board is required by the statute to instruct the inspectors regarding this statute and the applicable rules. In order to provide that instruction in these circumstances, the Board will need some additional information from the supervisors and the inspectors in the affected counties. Accordingly, the Board will ask those entities to file comments in this docket regarding Dakota Access's plan to suspend restoration activities. While the Board has some specific areas of interest, identified below, the comments may be addressed to any aspect of the plan.

The Board is interested in receiving comments regarding the following subjects:

1. What is the possible effect of the plan on the supervisors' and inspectors' ability to effectively and efficiently inspect the remaining pipeline-related activities when resumed in the spring?
2. Is Dakota Access's proposed time frame for notification proper and reasonable? For example, if the inspectors are released to do other work, will they

be able to return to this project in an efficient and timely manner based on 14 days' notice?

3. What are the cost implications of the proposal for the supervisors and are there alternatives that might be more efficient? For example, if there is paperwork that remains to be done on the pipeline construction activities that have already been completed and inspected, would it be a reasonable cost to continue to employ some or all of the inspectors on this project in January and February rather than release them to other work?

4. Dakota Access proposes to provide each affected landowner with a written 14-day notice and a 48-hour notice prior to re-starting the remaining restoration activities. Would additional notice to affected landowners be proper if, when suspended activities are resumed, one or more of the original inspectors are unavailable and a new inspector must be assigned to landowners who have been working with the original inspectors?

While the Board has identified these questions as matters of potential interest, the Board is interested in receiving information about all aspects of the Dakota Access plan and how they might affect the ability of the supervisors and inspectors to perform their statutory duties.

Dakota Access also says that if it has an emergency or other urgent situation during the suspension period (such as observed erosion or ground changes around the line) that requires maintenance or repair activities, it will provide advance notice to the county engineer and to each affected landowner prior to performing the work. Dakota Access does not indicate who will inspect the work while it is being done if all

county inspectors have been released for the winter. Until the Board has more information on this point, sufficient to determine whether there are adequate provisions for any emergencies, the Board finds that “the reasonable costs of the inspection” include the reasonable cost of keeping the inspectors on retainer or otherwise available to perform inspections in the event of an emergency or other urgent situation.

The Board will also require Dakota Access to file notice in this docket within 24 hours of the identification of any situation that requires Dakota Access or its contractors to engage in any type of activity on any property in Iowa during the winter suspension. The notice shall, at a minimum, include descriptions of, and information about, the situation, the activity required, any involvement of the affected landowner or other members of the public, any involvement of a county inspector, and for activities that span more than 24 hours a projected schedule of activities.

Dakota Access also proposes to file its final weekly report on December 28, 2016, and resume filing the reports following the first week of resumed construction activities in 2017. This is a reasonable proposal; however, the Board will expect a supplemental report if there are any urgent activities during the suspension period, as described in the preceding paragraph. Any such reports should be filed within five business days of the beginning of the activities and should describe the events leading up to the activities and the activities themselves.

The Dakota Access letter says it was copied to the county auditors (on behalf of the boards of supervisors) and the county inspectors; the Board will direct that this order be served on the same entities.

**IT IS THEREFORE ORDERED:**

1. This order shall be served by email on the county inspectors for this project as identified on the Board's Web site at this location:  
<https://iub.iowa.gov/sites/default/files/files/media/releases/2016/0819-Pipeline-Complaint-Procedures-County-Inspectors-List.pdf> and on the county auditors for the affected counties by U.S. mail.
2. The County Boards of Supervisors; county inspectors; Office of Consumer Advocate, a division of the Iowa Department of Justice; and any other interested parties are invited to submit comments on the matters identified in the body of this order. It would be appreciated if comments are filed by January 6, 2017, but late-filed comments will be accepted.
3. Dakota Access may discontinue filing weekly construction reports following the December 28, 2016, report, and resuming following the first week of re-started construction activities in 2017. However, if Dakota Access undertakes any maintenance or repair activities in response to an emergency or other urgent situation, as described in the December 19, 2016, letter filed by Dakota Access, then a supplemental construction report shall be filed within five business days of the beginning of the activities, explaining the events that caused the company to undertake those activities, the precise nature of the activities, and the result of the activities.
4. Because of the possible need for emergency inspections, the Board concludes that until further order of the Board, the reasonable cost of keeping the county inspectors on retainer or otherwise available to perform inspections as

needed is a part of “the reasonable costs of the inspection” for purposes of Iowa Code § 479B.20.

**UTILITIES BOARD**

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano  
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 21<sup>st</sup> day of December 2016.